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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.64 OF 1994
Cuttack, this the 21st day of April, 1998

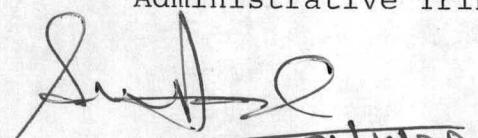
Rajiv Maharana and 28 othersApplicants

Vrs.

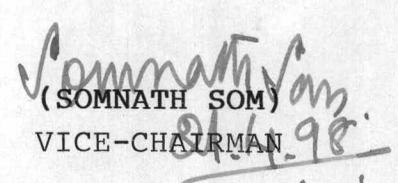
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.


(S.K.AGRAWAL)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.64 OF 1994
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....

1. Rajiv Maharana,
s/o Biswaranjan Maharana
a permanent resident of
village-Purnabasti,
PO-Chakradharpur,
Dist.Singhbhum,
State-Bihar.
2. Tapas Sen Gupta,
s/o Aurobinda Sen Gupta
a permanent resident of
Quarter No.E/56,
At/PO-Bandamunda,
District-Sundargarh (Orissa)
3. J.Ranga Naidu,
s/o J.T.Naidu
a permanent resident of
village/PO-Karavanja,
District-Srikakulam,
State-Andhra Pradesh.
4. Debashis Mitra
s/o Jyoti Kumar Mitra
a permanent resident of quarter No.119/B,
At/PO-Bandamunda,
Dist. Sundargarh (Orissa).
5. Ujjal Bhattacharjee
s/o Porimal Kumar Bhattacharjee
a permanent resident of
Quarter No.C/181,
At/PO-Bandamunda
Dist.Sundargarh (Orissa)
6. R.Venkateswar Rao
s/o R.Rama Rao
a permanent resident of
At/PO-Jupri,
Bondamunda, Dist.Sundargarh(Orissa)

*Commr. J.S.
21.4.98.*

7. B.Gopi,
s/o late B.Lachanna
a permanent resident of
C/Cabin/Jupri
At/PO-Bandamunda
District-Sundargarh (Orissa)
8. B.Malleswar Rao
s/o late B.Lachanna
D/Market, House No.175
At/PO-Bandamunda
District-Sundargarh (Orissa)
9. N.J.Rao
s/o N.V.Rao
Quarter No.A/61
At/PO-Bandamunda
District-Sundargarh (Orissa)
10. Y.Ajai Kumar
s/o Y.K.Rao
Quarter No.C/227
At/PO-Bandamunda
District-Sundargarh (Orissa)
11. Sheuji Singh
s/o Ramji Singh
Quarter No.E/57
At/PO-Bandamunda
District-Sundargarh (Orissa)
12. L.Malaiah
s/o L.Sita Rao
Quarter No.61/B
At/PO-Bondamunda
District-Sundargarh (Orissa)
13. O.Madhava Rao
s/o O.Kuna Rao
At/PO-Gundichapalli
Sector-D, Bandamunda
District-Sundargarh (Orissa)
14. G.Appadu
s/o G.Pentayya
Sector-D Main Road
At/PO-Bandamunda
District-Sundargarh (Orisa)
15. G.Venkataramana
s/o late G.Chinna
D/Cabin Road
At/PO-Bandamunda
District-Sundargarh (Orissa)

*Committtee
21.4.98*

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16. Subhas Chandra Das
s/o Madhusudan Das
Sector-C/134
At/PO-Bandamunda
District-Sundargarh (Orissa)
17. Munilal Pradhan
s/o Rameswar Pradhan
village-Hatiya
PO-Chakradharpur
Dist. Singhbhum (Bihar)
18. A.A.Narasingh Rao
s/o A.J.Rao
Quarter No.B/26
At/PO-Bandamunda
Dist.Sundargarh (Orissa)
19. Prabir Chakraborty
s/o Paresh Chakraborty
Quarter No.292/D
At/PO-Bandamunda
District-Sundargarh (Orissa)
20. B.Balaram Swamy
s/o B.J.Rao
Quarter No.175/D
At/PO-Bandamunda
District-Sundargarh (Orissa)
21. Gurwa Burd
s/o late Langar Burd
Ex/Yard/Jupri
At/PO-Bandamunda
District-Sundargarh (Orissa)
22. B.Ramachandra Rao
s/o B.Bhima Rao
Quarter No.116/D
At/PO-Bandamunda
District-Sundargarh (Orissa)
23. Susanta Kumar Ghosh
s/o late P.K.Ghosh
Quarter No.E/206
At/PO-Bandamunda
District-Sundargarh (Orissa)
24. Kali Das Neogi
s/o B.P.Neogi
Quarter No.C/45
At/PO-Bandamunda
District-Sundargarh (Orissa)

*Sanum J.M
21.4.98*

25. Ramjee Singh
s/o B.Singh
Quarter No.69/C
At/PO-Bandamunda
District-Sundargarh (Orissa)

26. Swapan Kumar Roy
s/o P.B.Roy
Quarter No.A/373,
At/PO-Bandamunda
District-Sundargarh (Orissa)

27. Binod Kumar
s/o P.Mahato
Sector-C/Jupri
At/PO-Bandamunda
Dist.Sundargarh (Orissa)

28. Nanik Kumar Dutta
s/o H.P.Dutta
Diesel Colony
Quarter No.L/76/1
At/PO-Bandamunda
District-Sundargarh (Orissa)

29. B.Lokeswar Rao
s/o B.Latchanna
Quarter No.131/D
At/PO-Bandamunda
District-Sundargarh (Orissa)

All are working as Substitute Token Porters,
Bandamunda Railway Station,
At/PO-Bandamunda,District-Sundargarh (Orissa) ...Applicants

Somnath Jana
21.4.98

Advocates for the applicants -

M/s S.Palit
B.Mohanty
B.K.Rout
& M.P.Mohapatra

Versus

1. Union of India
represented through
General Manager
South Eastern Railway,
Garden Reach, Calcutta (West Bengal).

2. Divisional Railway Manager,
South Eastern Railway
At/PO-Chakradharpur
District-Singhbhum
State-Bihar.
3. Area Railway Manager
South Eastern Railway
At/PO-Bandamunda
District-Sundargarh (Orissa).
4. Senior Divisional Personnel Officer
South Eastern Railway
At/PO-Chakradharpur
District-Singhbhum
Bihar.
5. Senior Divisional Operating Manager,
South Eastern Railway,
Chakradharpur
PO-Chakradharpur
Dist.Singhbhum (Bihar)Respondents

Advocates for the respondents - M/s B.Pal &
O.N.Ghosh.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, 29 petitioners, who have been permitted to pursue this application jointly, have prayed for a direction to the respondents to regularise the services of twenty-two petitioners as detailed in paragraph 4.2 of the petition as Token Porters and to regularise the services of seven others as Trained Controlling Operators. There is also a prayer for a direction to the respondents to allow the petitioners the scale of pay which is being allowed to regular Token Porters and regular Trained Controlling Operators.

*Somnath Som
21.11.96*

2. Case of the petitioners is that they have been working as substitute Token Porters under Chakradharpur Division of South Eastern Railway and are attached to Bandamunda Railway Station on different duties in 1988. They have been working with full satisfaction of their superior authorities. But for all these years they have been working on casual basis though without any interruption. Seven of the applicants as detailed in paragraph 4.5 of the application have been discharging duties as Trained Controlling Operator (T.C.O) which is a clerical post since 1991 though they are also designated as substitute Token Porters. These seven applicants have the requisite qualification to hold the post of T.C.O.. The applicants learnt from reliable sources that several posts of Token Porters and T.C.Os. were lying vacant. But in spite of representations made by them and assurances given by the respondents, their services have not been regularised even though they acquired temporary status long back. They are also not being allowed the minimum of the scale of pay of their counter-parts in the regular establishment. The applicants have, in the meantime, crossed the upper age limit and they understand that the authorities are making preparation for dispensing with their services. That is how they have come up with the aforesaid prayers.

*Somnath Jm
21.4.98*

3. On the date of admission of this petition on 18.2.1994, by way of interim relief, it was ordered that the services of the petitioner should not be dispensed with until further orders and liberty was given to the respondents to move the Bench for vacation of the stay order, if they so desire.

4. The respondents in their counter have submitted that in September-October 1988, the Area Superintendent, Bandamunda engaged 35 substitutes to work against day-to-day casualties in the Operating Department of S.E.Railway, Bandamunda. Such engagement was made on the basis of past employment particulars of the thirty-five persons as casual labourers as provided by those persons. Some of those persons are applicants in this case. According to the respondents, under the Rules new entrants as casual labourers or substitutes can be engaged only in the exigency of service with personal approval of General Manager of the concerned Railway. The Area Superintendent, Bandamunda, sent the list of thirty-five persons so engaged for approval of Senior Divisional Operating Superintendent. But as such appointment was not in accordance with Rules, the Senior Divisional Operating Superintendent passed orders for discharge of those 35 substitutes immediately. But the Area Superintendent, Bandamunda, did not discharge them.

*Somnath Jha
21.4.98*

Initially their wages could not be drawn. Subsequently these substitutes represented their grievance to Assistant Labour Commissioner(Central), Rourkela and their wages were released and necessary office orders were issued on 3.10.1989. In the meantime, the Vigilance Department of the Railways seized the relevant files in the custody of Area Superintendent, Bandamunda, on 16.2.1989 for verification. The Vigilance Department intimated that out of the thirty-five persons engaged as substitutes, the vigilance investigation has been taken up in respect of thirty persons. Out of those thirty persons, twenty-six are applicants in the present case. The cases of applicant nos. 11, 17 and 28 are not subject-matters of vigilance enquiry. The respondents have stated that these thirty persons against whom vigilance enquiry is going on obtained their engagement as substitute Token Porters on the basis of their previous engagement as casual labourers and their retrenchment. But these past employment records are suspected to be forgeries and that is why the vigilance enquiry has been taken up. As regards the vacancies in the posts of Control Clerk and Token Porter, it is submitted by the respondents that the necessary selection process for filling up of the posts of Control Clerks has already been initiated. As regards the post of Token Porters, the respondents have stated in paragraph 12 of

*Sanctioned
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their counter that after the applicants' engagement as substitutes is cleared by the Vigilance Department and is found to be valid, their cases will be considered for screening for the purpose of empanelment for regular appointment in Group-D posts as and when vacancies would arise in those posts. They have also stated that the applicants have been found entitled to conferment of temporary status after continuous employment of 120 days as substitutes. Thus, because of the pendency of the vigilance case against twenty-six of the 29 applicants, the respondents have opposed the prayers of the applicants.

5. We have heard Shri S.Palit, the learned lawyer for the applicants and Shri B.Pal, the learned Senior Counsel appearing on behalf of the respondents, and have also perused the records.

6. At the time of hearing, it was submitted by the learned Senior Counsel, Shri Pal appearing on behalf of the respondents that the vigilance enquiry has been completed in the meantime in July 1997 and further action on the basis of the enquiry report will have to be taken. It is submitted by the learned lawyer for the petitioner, Shri S.Palit that the enquiry has been held behind the back of the petitioners and no effective action can be taken on the basis of such report without affording an opportunity to the petitioners to explain the adverse circumstances allegedly proved against them. It is fairly conceded by the learned Senior Counsel appearing for the

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respondents that in case any action is to be taken against any of the applicants on the basis of the vigilance report, reasonable opportunity will be given to the concerned applicant to explain the adverse circumstances alleged against him. In view of the above submissions made by the learned counsels of both sides, this petition is disposed of with a direction to the respondents that further follow-up action on the basis of the report of the Vigilance Organisation should be initiated and completed within a period of 6 (six) months from the date of receipt of copy of this order. Those of the applicants against whom action is contemplated should be afforded an opportunity to show cause against the proposed action and to explain their conduct. Obviously, till this follow-up action is completed, the question of regularisation of those applicants would not arise. Therefore, the prayer of the applicants to regularise their services straightaway either as Token Porter or as Control Clerk is held to be without any merit and is rejected. As regards three of the applicants, applicant nos.11,17 and 28 against whom there is no vigilance report, the respondents are directed to consider the case of regularisation of these three applicants strictly in accordance with Rules and according to their turn. The prayer of the applicants to get regular scale of pay and other financial benefits cannot be granted straightaway. It must await till the action contemplated against

*Sameena Jam
21.11.98*

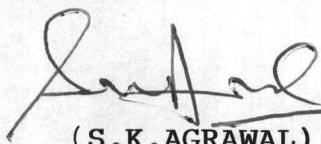
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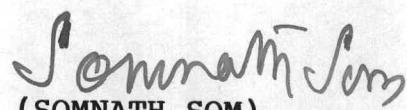
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26 of them is completed within the period mentioned earlier and till the other three applicants are regularised.

7. In the result, therefore, the application is disposed of in terms of the direction given in paragraph 6 above. There shall be no order as to costs.


(S.K.AGRAWAL) 21/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
21/4/98
VICE-CHAIRMAN

AN/PS